

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GROVER BLACKWELL and JEFFREY FUQUAY

Appeal 2006-2874
Application 09/888,044
Technology 1700

Decided: September 29, 2006

Before KIMLIN, PAK, and GAUDETTE, Administrative Patent Judges.
GAUDETTE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the Final Rejection mailed August 4, 2004. Claims 1-20 are pending and on appeal.

Claim 1 is illustrative of the subject matter now on appeal and is reproduced below:

1. A shutter comprising:

a face panel made from a synthetic polymer, said face panel including a first vertical end portion and a second vertical end portion;

a first rear vertical support and a second rear vertical support attached to said face panel, said rear vertical supports being spaced apart and extending along the length of said face panel, said first rear vertical support being positioned adjacent to said first vertical end portion and said second rear vertical support being positioned adjacent to said second vertical end portion; and

at least one rear horizontal support attached to said face panel, said rear horizontal support extending in between said pair of rear vertical supports; and

a first channel member and a second channel member, each of said channel members having a U-shaped cross-section and being made from a metal, said first channel member being placed over and enclosing said first vertical end portion and said first rear vertical support and said second channel member being placed over and enclosing said second vertical end portion and said second rear vertical support, the first and second channel members forming exterior vertical edges of the shutter.

GROUND OF REJECTION

Claims 1-20 stand rejected under 35 USC § 103 as unpatentable over Taylor in view of Ruggles.

The Examiner relies upon the following references as evidence of obviousness:

Taylor	US 5,848,505	Dec. 15, 1998
Ruggles	US 6,014,839	Jan. 18, 2000

BACKGROUND

The invention is directed to a shutter made from a synthetic polymer that is said to have improved strength. The shutter includes a face panel attached to a first rear vertical support and a second rear vertical support. First and second channel members secure the face panel to the rear vertical supports and enclose the corresponding vertical end portions and rear

supports. The face panel is made from a synthetic polymer while the channel members are made from a metal.

DISCUSSION

The Examiner relies on Taylor for a disclosure of the invention as claimed. The Examiner notes that only a portion of each channel member, i.e., an aluminum rod insert, is made of metal. Thus, the Examiner further relies on Ruggles for a teaching that the frame of the shutter can be made of metal as well as other materials (Answer 5, citing col. 6, ll. 10-14). *See* Answer, para. bridging 6-7.

Appellants concede that Taylor incorporates metal rods into his shutter. However, Appellants maintain that the present invention is patentable over Taylor, because Taylor fails to disclose or suggest channel members made from a metal that form the *exterior edges* of a shutter (Br. 2). Appellants further assert that Taylor teaches away from the claimed invention because Taylor conceals the aluminum rods from view by ensuring that they are imbedded within the shutter as opposed to forming exterior vertical edges (Br. 3). Appellants also point out that the metal rod inserts of Taylor are used only for reinforcement of the shutter while “the first and second channel members of the present application, not only reinforce, but also consolidate the entire structure by enclosing the vertical edges of the shutter” (Br. 3-4). Appellants argue that Ruggles merely states that the frame of the shutter may be constructed from various materials and provides no motivation or suggestion to modify Taylor’s shutter such that the exterior vertical edges are formed from metal (Br. 4).

We have considered Appellants' arguments for patentability, however, we find that the claimed invention would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art for the reasons set forth in the Answer.

As pointed out by the Examiner, Appellants attempt to distinguish their invention over the cited references by relying on features which are not recited in the claims. *See Panduit v. Dennison Mfg. Co.*, 774 F.2d 1082, 1093, 227 USPQ 337, 344 (Fed. Cir. 1985) (Patentability begins with the legal question "what is the invention claimed?") According to Appellants:

Claims 1, 11 and 17 all require that the channel members be made from a metal. All of the claims further require that the first and second channel members form the exterior vertical edges of the shutter. Thus, the exterior vertical edges of the shutter are made from a metal.

Br. 2.

As noted by the Examiner, Appellants' claims are not as limited as Appellants suggest. Contrary to Appellants' assertion, the *claimed invention* is not directed to a shutter having "exposed areas made from metal" or to "metal channel members that form exterior edges of the shutter" (Answer 7). Rather, Appellants' claims are broadly drafted to recite channel members having a U-shaped cross section and being *made of metal*.¹ Thus, we are in

¹ The claims recite, in relevant part:

each of said channel members having a U-shaped cross-section and being made from a metal, . . . the first and second channel members forming exterior vertical edges of the shutter (Claim 1).

agreement with the Examiner that Appellants' claims read on Taylor's U-shaped channels wherein a portion thereof, i.e., the aluminum rods, are made of metal.² Moreover, we fail to see any merit in Appellants' assertion that Taylor teaches away from the claimed invention, since the claims, as broadly drafted, read on a shutter wherein the metal portion of the channel member is concealed.³

Appellants have not presented separate arguments for any particular claim. Accordingly, the rejection of claims 1-20 is affirmed.

each of said channel members having a U-shaped cross-section and being made from a material, . . . the first and second channel members forming exterior vertical edges of the shutter (Claim 11).

a first channel member and a second channel member that form exterior vertical edges of the shutter, each of said channel members having a U-shaped cross section and being made from a metal (Claim 17).

² We further note that Appellants' arguments regarding differences in function of the claimed channel members versus those of Taylor are not relevant to patentability of the structure as claimed.

³ Appellants rely on this argument to overcome the Examiner's rejection based on the combined teachings of Taylor and Ruggles. Appellants fail to address, on the merits, the Examiner's citation of Ruggles as showing that metal would have been a suitable material for construction of Taylor's channel members (Br., para. bridging 4-5).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

clj

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